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Conference

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA BROUGHEL,

Plaintiff,

v.

07 CV 7755 (GBD)

THE BATTERY CONSERVANCY, et
al.,

Defendants.

New York, N.Y.
April 8, 2008
10:05 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

THE LAW OFFICE OF BARBARA HOFFMAN

Attorneys for Plaintiff

BY: BARBARA T. HOFFMAN

SULLIVAN & CROMWELL

Attorneys for Defendants The Battery Conservancy and
Warrie Price

BY: MARGARET KOLODNY PFEIFFER

RITA CARRIER

SINNREICH & KOSAKOFF

Attorneys for Defendants Claire Weisz and Mark Yoes d/b/a
Weisz + Yoes

BY: JARRETT M. BEHAR

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1 (Case called)

2 MS. HOFFMAN: Good morning, your Honor, Barbara
3 Hoffman, Hoffman Law Firm, representing Barbara Broughel,
4 plaintiff.

5 THE COURT: Good morning.

6 MS. PFEIFFER: Good morning, your Honor, Margaret
7 Pfeiffer, and I have with me Rita Carrier, we represent The
8 Battery Conservancy and Warrie Price.

9 THE COURT: Good morning.

10 MR. BEHAR: Good morning, your Honor, Jarrett Behar,
11 Sinnreich & Kosakoff, we represent the defendants Claire Weisz
12 and Mark Yoes doing business as Weisz + Yoes.

13 THE COURT: Good morning.

14 Let me start ask you, Ms. Hoffman. What's the status
15 at this point? I received some letters last month with regard
16 to disputes over motion and deposition. What is the status?

17 MS. HOFFMAN: Your Honor, you issued a stay on the
18 discovery of the depositions that had been scheduled, and since
19 that time the Battery Conservancy and Warrie Price filed their
20 motion for judgment on the pleadings. We responded to that
21 motion last Monday in accordance with the schedule that had
22 been agreed to, and we cross-moved for a preliminary
23 injunction.

24 And then quite astonishingly we received -- at least
25 it was astonishing to me -- we received papers on Friday after

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1 we had filed our papers with you on behalf of Weisz + Yoes in
2 which they moved for judgment on the pleadings which was
3 actually several months after -- well, at least one month
4 before the alleged intention of the defendant to move for
5 judgment on the pleadings and two months after we had served
6 the notice to take depositions of Ms. Claire Weisz of Weisz +
7 Yoes.

8 THE COURT: Are the grounds any different than the
9 first motion?

10 MS. HOFFMAN: I believe that they're more or less the
11 same grounds.

12 THE COURT: So what do you think should be done at
13 this point?

14 MS. HOFFMAN: As I said, I thought it was burdensome
15 to have to respond to two different motions, having filed our
16 original motion papers which were extensive with numerous
17 declarations.

18 THE COURT: As I always say to lawyers, if your first
19 set of papers were persuasive I suggest you not respond, but if
20 you think it compels you to say something different than what
21 you have to say --

22 MS. HOFFMAN: If that's an option and I can just say
23 ditto, I would be very happy to do it. Alternatively, if we do
24 respond, and I guess from our perspective we really don't want
25 to make a big deal of it, I think probably against Weisz + Yoes

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1 we would in fact request leave to move for partial summary
2 judgment on the issue of copyright infringement since we
3 believe that there's actually no disputed issue of fact that
4 the images of my client, Barbara Broughel, who is the artist
5 who we claim was wrongfully removed from this project that she
6 was selected to do, there's absolutely no dispute that the
7 images appeared on the websites of both Weisz + Yoes and the
8 Battery Conservancy.

9 THE COURT: When are you scheduled to file a reply?

10 MS. HOFFMAN: We had an agreed-to schedule, and I
11 believe the reply is due on -- the reply of our answer would be
12 due on -- their papers would be on the 21st of April, then
13 following that they would have to reply to our motion for the
14 preliminary injunction, and then we would have a reply on that,
15 which would be the normal time after April 21st.

16 THE COURT: Given that further schedule, I assume
17 either one of those opportunities that you can supplement
18 whatever you need to supplement to respond to or do you need
19 more time?

20 MS. HOFFMAN: No, I think within that framework we
21 could clearly do it.

22 THE COURT: Let me see if we can stay on that schedule
23 then, and then to the extent that you think it's appropriate to
24 add something further then you can do that in that time frame.

25 Let me turn to the other side. Ms. Pfeiffer, how do

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1 you want to proceed?

2 MS. PFEIFFER: Your Honor, we had raised -- we had
3 asked for this conference under Rule 37 to discuss a further
4 stay pending the resolution of our motion for judgment on the
5 pleadings which is made on behalf of the Conservancy and Warrie
6 Price. But that's a different subject than the one about Weisz
7 + Yoes having filed a separate motion for judgment on the
8 pleadings last week.

9 THE COURT: What is the status? I don't remember what
10 we did about the discovery.

11 MS. PFEIFFER: Your Honor, we stipulated between
12 counsel, actually among all three counsel, because I
13 volunteered to do that, to obtain a stipulation, and it was
14 agreed that discovery would be stayed pending the filing of the
15 motions, that is the briefing on the motions. What we would
16 like to do is to extend the stay to the decision on the motion
17 for judgement on the pleadings because, in our view, we think
18 you're going to grant the motion, and we believe that we should
19 not start on discovery on plaintiff's nine different causes of
20 action before that time.

21 THE COURT: When do you think the motions would be
22 fully submitted?

23 MS. PFEIFFER: Our motion will be fully submitted on
24 the 21st.

25 THE COURT: When will all motions be fully submitted?

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1 MS. PFEIFFER: I believe it's the 28th of April, your
2 Honor.

3 THE COURT: This is what I'm willing to do: I think
4 that I will set it down maybe the first week in May and you
5 could be heard on the motions, and at that point in time I will
6 decide, having had an opportunity to review the papers and hear
7 you further, whether or not it even makes sense to rule from
8 the bench or makes sense to stay discovery further or it makes
9 sense to -- depending on the reactions on various motions,
10 whether it makes sense for a further temporary stay or to move
11 forward with discovery on any particular issue.

12 So I think that it makes sense to stay it until the
13 decision is made at that point, but I would like to see the
14 papers and see what the papers have to say and then I can give
15 you an opportunity at that point to convince me that a further
16 stay is warranted or not warranted or agreed that a stay is
17 warranted or not.

18 MS. PFEIFFER: So your Honor, should we go ahead and
19 file -- we were going to file a short brief on the stay, but it
20 sounds as though we should just wait and address the merits of
21 the motion.

22 THE COURT: Don't waste your time and expense to do
23 that.

24 MS. PFEIFFER: Okay.

25 THE COURT: As I say, I'm willing to at least stay it

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1 until I see you again, and if you want to convince me -- you
2 don't need much law to convince me if the merits of the case
3 warrant that.

4 MS. PFEIFFER: Your Honor, if I might, I'm going to be
5 out of the country until the middle of May.

6 THE COURT: What week would you be available?

7 MS. PFEIFFER: Any time after the 13th. I'm returning
8 on the 13th.

9 THE COURT: What about the 14th? Too soon? Wait,
10 that's wrong. Either the 14th or the 15th?

11 MS. PFEIFFER: The 15th would be better, your Honor.

12 MS. HOFFMAN: That would be fine for me, your Honor.

13 THE COURT: I'll schedule it now for 10:30 on the 15th
14 and we'll hear the other matters then I'll hear you on the
15 motion, and that will give me enough time to get the papers. I
16 will have all the papers before the end of April and all the
17 motions. So we'll do it that way, I'll stay discovery until
18 the 15th, then I'll decide on the 15th whether or not any
19 discovery should proceed and whether or not discovery should be
20 stayed further.

21 MS. PFEIFFER: Thank you, your Honor.

22 THE COURT: Thank you, your Honor.

23 MR. BEHAR: Your Honor, just for the record -- I will
24 say for the record I disagree with the characterization of what
25 happened as per Weisz + Yoes as per the plaintiff, but other

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1 than that --

2 THE COURT: That I hear a lot.

3 Okay. Let's get to the merits of this and give me the
4 papers. If there's anything else that arises between now and
5 then let me know and I'll resolve it, but otherwise I'm
6 interested in getting the papers so I can see the papers and
7 I'll hear you further.

8 MS. HOFFMAN: Thank you, your Honor.

9 MS. PFEIFFER: Thank you, your Honor.

10 MR. BEHAR: Thank you, your Honor.

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